



ORANGE COUNTY
REALTORS®



RAAR
Ridgecrest Area Association of REALTORS®



January 5, 2018

To: California Department of Business Oversight

From: Monterey Association of REALTORS®

Bakersfield Association of REALTORS®

Orange County REALTORS®

Santa Barbara Association of REALTORS®

Re: Comments on Proposed PACE-related Rulemaking

The undersigned REALTOR® Associations appreciate the Department of Business Oversight's invitation to provide input; and agree with the comments submitted by the California Low-Income Consumer Coalition, California Bankers Association, California Mortgage Bankers Association, California Credit Union League, California Land Title Association, California Association of REALTORS®, California Escrow Association, California Mortgage Association Consumers Union, and the United Trustees Association. The comments we are submitting today are intended to be supplemental to those comments. REALTOR® Associations have witnessed widespread abuse of consumers across the state due to Property Assessed Clean Energy (PACE) financing. It is imperative and most urgent that the PACE program and its administrators adhere to adequate consumer protections. Without such protections the public is left vulnerable to abuses that could have devastating financial consequences.

Books and Records

AB 1284 requires a program administrator to maintain books and records. What books and records are unique to the PACE industry? How long should these records be maintained? Why?

PACE functions as a quasi-governmental program, because it is financed as a property tax and is governed by a Joint Powers Authority (JPA) with local governments. As such, all related documents to

the transaction should be kept for the entire life of the assessment, plus five years after. These documents should include but are not limited to invoices, transcripts, records of consumer interactions, contractors' names, licenses and products installed by parcel number should be held for review and disclosed upon a public records request in compliance with the California Public Records Act.

Annual Report Data

The report submitted by the program administrator must report in a single table the following information by line item:

1. The initial funding for all PACE projects during the reporting period.
2. The total costs (including product costs, interest and all fees) to consumers over the entire period of the loan for the PACE projects originated in line 1 during the reporting period.
3. The estimated cost savings to consumers during the life of the loans (this number must be based on evidence that includes accepted Energy Star® and other data on product efficiency and effectiveness).

In a separate table report the following:

1. The total dollar amount of all PACE projects originated in the program administrator's areas of operations for all years.
2. The total dollar amount cost to all consumers over the entire life of all loans (itemized by the term of the loan such as 5-years, 10-years, 15-years and 20-years) for all years.

Why?

Currently, reports submitted by program administrators to local governments show only the initial loan amounts and number of properties with the associated loans. Each local government agency (city councils or boards of supervisors) that approved the program in their community has no method of comparing the value of the program with the total costs to consumers. Current reports list only the loan originations, without the total amount amortized over the life of the loan. It's misleading for policy makers to compare the initial dollar amounts loaned (the first year) with the estimated energy and water savings monetized over the entire life of the loan (often 20-years purported savings).

The current reporting methodology and formats seem to be set independently by each program administrator and are not uniform. The reports are deceptive and give a false sense of economy to the policymakers who allow the programs to continue year-after-year. The reports need to contain a line item analysis of the costs savings generated by each item suggested by a contractor for installation. This information will provide policymakers with a more accurate assessment of a year-to-year estimate of cost savings compared to the costs associated with a particular product.

Unfair Business Practices

AB 1284 prohibits a program administrator from engaging in unfair business practices. Are there any unfair business practices occurring? How can they be prevented?

Yes, unfair business practices are occurring or have occurred. This includes but is not limited to fraud and misrepresentation by PACE authorized contractors and soliciting agents. The DBO should aggressively pursue bad acting PACE authorized contractors and soliciting agents, and take related disciplinary action against the corresponding PACE provider for such actions.

Advertising Standards

AB 1284 prohibits false, misleading, or deceptive advertising. Are there any advertising practices that raise consumer protection concerns? Why? What are ways the Department can protect against misleading advertising that is not initiated by a program administrator?

In anecdotal evidence provided by consumers, contractors have regularly oversold the efficiency of PACE products in off-the-record conversations with unsophisticated consumers. Statements such as, "this product will pay for itself," has been regularly related by consumers as coming directly from the contractor. Additionally, comments from contractors intended to mitigate the follow up phone calls from the program administrators includes such statements as, "Say yes to everything they say, they don't know what they are talking about..." Moreover, the personal presence of the contractor has intimidated consumers from accurately reporting what was told to them by the contractor.

To mitigate this, all advertising material, in any form, and regardless of delivery method must include the phrase, **"In many cases the product you've selected may provide NO COST SAVINGS to you over the entire period of the loan."** This statement is supported by the program administrators' written statements contained in contracts holding them harmless if no cost savings is accrued.

- j. **No Endorsement, Warranty or Liability.** The Authority, Renovate America, Inc., and the Program do not endorse any manufacturer, contractor, product, or system, or in any way warranty such equipment, installation, or the efficiency or production capability of any equipment. The Authority, Renovate America, Inc. and the Program make no representations and have no responsibility regarding the equipment and its installation, including the quality, safety, cost savings, efficiency or production capability of any equipment; or any compliance of the equipment or its installation with any applicable laws, regulations, codes, standards or requirements. Further, the Authority, Renovate America, Inc. and the Program shall not be in any way liable for any incidental or consequential damages resulting from the equipment or its installation.

This is further supported by the admonition that some program administrators make to their contractors such as, "Don't say HERO will save you money" (extract from HERO guide to contractors).



Contractors should provide an in-depth analysis to the homeowner regarding the recommended upgrades. The analysis should contain a line item review of the costs savings generated by each item

suggested by a contractor for installation. This information will provide consumers with a more accurate assessment of a year-to-year estimate of cost savings compared to the life-span costs associated with a particular product or products installation.

Attaching an evidence-based dollar amount to all products, over a given time period, makes understanding contractor claims of the appropriateness of a product recommendation easier to understand for the consumer. For example, informing the consumer that according to the Department of Energy and Energy Star® data that new double-pane windows installed in Climate Zone 2 in California will result in an estimated savings to the homeowner of only \$65 PER YEAR (\$5.42 per month), will help the consumer understand the implications of paying an average cost of \$20,000 for those windows with additional fees at 10.56% interest that results in a property tax assessment for 20 years. This will alert the consumer to the fact that purchasing and financing these products might not make economic sense for many consumers living on fixed incomes or on the margins of financial solvency. The data that is readily available from vetted sources such as the DOE for approved products included in the PACE inventory will also allow consumers to test the fitness of renovation products and any potential savings the consumer might accrue against the total cost of the product installation.

Once the analysis is completed by the contractor and the estimated savings are tabulated over the life of the loan, then that data must be juxtaposed next to the estimated lifetime cost of the loan to the consumer (lifetime defined as the lifetime of the loan – 5,10,15 or 20 years). This disclosure should be made part of the record and included with the information submitted to the DBO. This type of information will help to mitigate false information presented to the consumer phrased as such statements as, “This will pay for itself,” or “It will only add a few dollars per month to your expenses”), both of these claims are common and in many cases outright fraudulent.

Solicitor Enrollment Standards or Processes

AB 1284 sets forth enrollment standards for PACE solicitors and PACE solicitor agents. What types of acts or practices, and how often must they occur before a program administrator should deny enrollment to a PACE solicitor or PACE solicitor agent? Why?

Practices leading to disenrollment:

1. Misleading consumers as to the overall cost of the loan.
2. Misleading consumers with statements about monthly cost of improvements.
3. Misleading consumers about the energy savings of any product on the PACE list.
4. Any ancillary improvements not related to PACE products used to generate more income for the contractor.
5. Faulty or misleading analysis of energy savings over the life of the product.
6. Shoddy workmanship.
7. Any behavior generally regarded as intimidating to consumers such as threatening a lawsuit, bullying or harassment if the consumer cancels during the 3-day period of right to cancel.

8. Any evidence of elder abuse regarding the solicitation, evaluation, analysis or work done for the homeowner.

9. Completion of any work or improvement that is not "approved" such as bathroom and kitchen remodels or RV parking completed for aesthetic purposes instead of energy or water savings.

Solicitor Monitoring Standards

AB 1284 requires a program administrator to monitor a PACE solicitor and PACE solicitor agent's compliance with applicable law. What types of procedures provide for this monitoring? Why?

1. Review all invoices to determine if the agreed upon price, materials list and product are within local price norms.

2. Review all invoices and product installations to ensure they are appropriate for the type of dwelling and anticipated energy savings.

3. Periodically conduct "secret shopper" events to determine what the PACE solicitor is communicating to the consumer regarding the PACE program and products.

4. Periodically conduct a complete review of the solicitor's business practices, complaints lodged against the contractor, on-site evaluation of product installation by a professional such as a home inspector, appraiser or licensed contractor not affiliated with the program administrator.

Other Suggestions

The DBO should consider a requirement that the contractor vacate the home during confirmed term phone calls to ensure that the consumer understands the terms and is able to speak freely.

The DBO should Define "emergency improvement," "immediate necessity improvement," and "efficiency improvement" by listing specifically qualified projects.

REALTORS(R) should have a designated complaint line.

Thank you for the opportunity to provide input during the initial stages of this process. Please note that our comments are incomplete due to the time frame, however, we look forward to providing more detailed comment as this critical issue is addressed by the Department.

Sincerely,

Monterey County Association of REALTORS®

Bakersfield Association of REALTORS®

Orange County REALTORS®

Santa Barbara Association of REALTORS®

Tehachapi Association of REALTORS®

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